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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 498

QUAKER STATE OIL REFINING CORPORATION,
Petitioner

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, AND APPENDIX

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Quaker State Oil Refining Corporation, petitioner, respectfully prays that a writ of certiorari issue to review the judgment and decree of the United States Court of Appeals for the Third Circuit entered in the above entitled case August 4, 1959, pursuant to an opinion filed June 15, 1959, and the denial of the petition for rehearing dated and entered August 25, 1959.

CITATIONS TO OPINIONS BELOW

The decision and order of the National Labor Relations Board is reported in 121 NLRB No. 49. The opinion of the Board majority is printed at page 18 et. seq. of the Appendix hereto, the dissenting opinion of Member Rodgers at page 30, and the dissenting opinion of Member Jenkins at page 30 et. seq.

The opinion of the Court of Appeals has not yet been officially reported, but is reported in Volume 37,

CCH Labor Cases ¶ 65535, page 66907 (advance sheets). It is printed at page 38 et seq. of the Appendix hereto.

JURISDICTION

The decree of the United States Court of Appeals was entered on August 4, 1959. A petition for rehearing was denied August 25, 1959. Jurisdiction of the Supreme Court is invoked under 28 USC, § 1254(i) on the grounds that the Court of Appeals has rendered a decision in conflict with that of another Court of Appeals in the same matter, and that the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by the Supreme Court.

QUESTIONS PRESENTED

Petitioner operated an oil refinery, comprised of a number of operating units that were potentially hazardous, as well as some non-hazardous units or operations. When petitioner's contract with the union expired, and no agreement had been reached on a new contract despite a number of negotiating meetings, proposals and counter-proposals, petitioner stopped operation of the hazardous units but continued the balance of its operations, saying it would not operate the dangerous units without the security of a contract. The employees as a result received less than a full week's work for about four months. The Board found this a refusal to bargain and an unlawful lockout, and ordered petitioner to pay additional wages for the short weeks, and the Court of Appeals affirmed.

The questions presented are:

1. Whether a partial economic lockout by a single employer following expiration of the company-union con-

tract to exert pressure on a union to make a new contract is unlawful under the National Labor Relations Act.

2. Whether the hazardous nature of an employer's operation is such a special circumstance as to require modification of the Board's general rule that a strike must be threatened and virtually certain before an employer may curtail his operation in anticipation thereof.

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved are the provisions of the National Labor Relations Act, as amended, 29 U.S.C., Chapter 7, Subchapter II, § 151-168, and more particularly the following:

"Sec. 8. (a) It shall be an unfair labor practice for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7. [49 Stat. 452, 29 U.S. Code, Sec. 158(1).]

* * * * * * *

"(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . .

* * * * * * *

"(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a). [49 Stat. 452, 29 U.S. Code, Sec. 158(5).]

"(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * * * *

"(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a).

"(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice

of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:"

STATEMENT OF THE CASE

The National Labor Relations Board, as the court of first instance had jurisdiction of this case under the National Labor Relations Act, supra, because the case involved alleged violations of Sections 8(a) (1), (3) and (5) of the Act by an employer who was admittedly engaged in interstate commerce.

Quaker State Oil Refining Corporation is a producer and refiner of petroleum. It operates an oil refinery in the small community of Emlenton, in northwestern Pennsylvania. The Emlenton plant is a typical oil refinery containing the machinery and equipment used to break crude petroleum down into its several useful component parts such as gasoline, grease, oil and wax.

The equipment includes large tanks for storage of raw, semi-finished and finished products, stills and cracking machinery, miles of pipes and thousands of valves, pumps and the like. The materials stored and processed are for the most part highly inflammable or explosive.

The plant is located immediately adjacent to a number of dwelling houses. On the plant premises are office